

DATE: April 30, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0845

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esquire

Department Counsel

FOR THE APPLICANT

Howard L. Muhl, Jr., Esquire

STATEMENT OF THE CASE

On 22 November 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 12 December 1996, Applicant answered the SOR and requested an administrative decision on the record. On 12 March 1997 and again on 28 April 1997, Applicant responded to the Government's File of Relevant Material (FORM)--issued 2 January 1997. The case was originally assigned to a different Administrative Judge, but was reassigned to me because of caseload considerations on 28 April 1997. I received the case on 28 April 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admits the allegations of the SOR, except that he denies subparagraph 1.a. to the extent it implies he used marijuana as often as twice a month up to July 1996; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 24-year old employee of a defense contractor--seeks a security clearance.

The allegations of the SOR revolve around Applicant's involvement with illicit drugs. Applicant began using marijuana in 1991 or 1992, while in college. He first tried it because of curiosity, but continued to use because he enjoyed the

effects. He smoked once or twice a month at parties or in social situations. In May 1995, Applicant graduated from college and stopped using marijuana regularly. Between May and September 1995, Applicant used marijuana on two occasions; he last used marijuana on a boating trip in July 1996. He describes this last use as a mistake.

Applicant used hallucinogenic mushrooms once in May 1995, out of curiosity. He has not used any other illegal drugs.

On 25 September 1993--while on a camping trip--Applicant was arrested for possession of marijuana. Applicant pleaded guilty, received probation before judgment, and had this record expunged on 21 April 1997.

Applicant went to work for his present employer in November 1995. Except for his last marijuana use in July 1996--which he is unable to explain--Applicant stopped using marijuana when he obtained full time employment. He stopped because he did not want it to effect his work. He does not intend to use any illegal drugs in the future. There is no evidence of drug dependency in the case record.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

DRUG INVOLVEMENT (CRITERION H)

Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any drug abuse;
- (2) illegal drug possession,

Conditions that could mitigate security concerns include:

- (3) a demonstrated intent not to abuse any drugs in the future.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion H; however, I find the conduct mitigated. The record evidence clearly establishes Applicant's regular marijuana abuse (approximately twice monthly) during his college years. However, the periods of regular abuse were at most 1991 to May 1995. After graduation, Applicant used marijuana twice more in 1995, and once--in July 1996--after obtaining full time employment with his present employer. He has not used since and does not intend to use in the future. There is no evidence of physical or psychological dependence. Further, Applicant recognizes the potential consequences for his clearance should he return to drug use.

The expungement of Applicant's drug arrest does not vitiate its security significance; however, I find the arrest sufficiently remote to be mitigated in the absence of any evidence of repeat offenses. Similarly, Applicant's May 1995 one-time use of hallucinogenic mushrooms is mitigated by Applicant's demonstrated intent to refrain from drug use in the future. Accordingly, I find criterion H. for Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion H: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).